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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,182

08/03/2007

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09997.0136USWO

1255

23552 7590 03/16/2011
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EXAMINER

PRICE, NATHAN R

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,182	Applicant(s) BARVAIS ET AL.	
	Examiner NATHAN R. PRICE	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/03/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This office action is responsive to the amendment filed on January 7, 2011. As directed by the amendment: claims 1, 3-9, 11, 12, 14, 15, and 17-20 have been amended, claims 2 and 13 have been cancelled, and new claims 21-23 have been added. Thus, claims 1, 3-12, and 14-23 are presently pending in this application.
2. The claim amendments are sufficient to overcome the rejections under 35 U.S.C. 112 from the previous action.

Claim Objections

3. Claim 1 is objected to because of the following informalities: “the observation from the user” lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-8, and 14, 15, and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers et al. (US 20020169636).
6. Regarding claims 1, 3-8, 14, 15, and 19-23, Eggers et al. discloses a system for computer-aided intravenous delivery of a drug to a patient (system of fig. 1 and 2) during a whole duration of an anesthetic procedure on the patient (capable of being used over such a time period) comprising a knowledge base 56 storing a set of written

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parameters to steer intravenous delivery of drugs as claimed (see fig. 2; par. 0032-0033) including first and second procedures (see fig. 2); a sensor (module specific components 76 of unit 18; par. 0026; module 18 in the form of a "blood pressure monitor, pulse oximeter, EKG/EEG monitor, heart rate monitor, or an intracranial pressure monitor"); an infusion session manager 12 comprising an infusion controller (controller 70 of unit 16; unit 16 being an infusion pump module, par. 0026); a communication controller 52 (par. 0025); a datalogger controller that receives the signal from the sensor (controller 70 of unit 18); a GUI 54 (par. 0024); a first interface (one of internal buses 64; par. 0023) a session controller 50 (see fig. 1 and 2); a second interface (another of internal buses 64; par. 0023) linking the session controller to the views displayed by the GUI; a third interface (par. 0027; communication interface between 18 and 14); an archiving manager (hospital network 10) storing data needed to restart or recover actions (par. 0036) and a program that controls the infusion session manager and the archiving manager (automatic decision making described in par. 0031); patient health monitor 20.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-12 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggers et al. in view of Hickie et al. (US 20030051737).

9. Regarding claims 9-12 and 16-18, Eggers et al. discloses the apparatus as claimed except for the infusion controller administering one of the drugs claimed. However, Hickie et al. discloses utilizing a control system to deliver Propofol (par. 0034). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Eggers et al. apparatus to deliver Propofol as taught by Hickie et al. since it Hickie teaches that it is advantageous to program an automated delivery system to dispense Propofol.

Response to Arguments

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

11. Examiner notes that the limitations from the preamble regarding delivering a drug "during a whole duration of an anesthetic procedure on the patient" is a functional, intended use limitation. Generally, a device capable of delivering medication during a medical procedure will be capable of delivering that medication during an anesthetic procedure thus meeting the requirements of this limitation. This limitations does not require specifically delivering an anesthetic.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN R. PRICE whose telephone number is (571)270-5421. The examiner can normally be reached on Monday-Thursday, 9:00 a.m. - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. R. P./
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art
Unit 3763